



FAQ Regarding Biden's Nonimmigrant Visa Policy Changes

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What are the policy changes the Biden administration is implementing regarding temporary work visas?

On June 18, 2024, the Biden administration announced a policy change to establish clearer guidelines to streamline the process for individuals to more easily obtain temporary work visas. On July 15, 2024, the Department of State released an [FAQ](#) and updated policy implementation language related to this announcement.

DACA beneficiaries and undocumented individuals who qualify and apply for temporary work visas must depart the United States to obtain the visa from a consulate abroad. This step of the process occurs after the underlying visa petition has been submitted and approved. However, some persons who qualify for a temporary work visa must request a so-called D-3 waiver from a consulate abroad before obtaining their visa, to address certain past immigration violations. The normal adjudication process for D-3 waivers can take months, leaving individuals stranded abroad while awaiting approval. The new policy updates specify when immigration officers can expedite D-3 waivers and clarify eligibility criteria for the waiver.

What is a D-3 waiver and who does it apply to?

The so-called D-3 waiver comes from a section in immigration law, INA § 212(d)(3), which authorizes immigration officers to issue a discretionary waiver for most immigration violations known as grounds of inadmissibility. The D-3 waiver is available for any temporary visa, but for our purposes we focus on temporary work visas. Immigration officers have the discretion to grant a D-3 waiver to individuals with an immigration violation for them to obtain their visa.

As part of the process to grant a D-3 waiver, immigration officers are instructed to assess the positive effects of the person's travel on U.S. public interests. The new policy states that in



general, individuals with a degree from a U.S. institution of higher education, or those with credentials to engage in skilled labor in the United States, and who come to work for a U.S. employer in a field related to their education, are considered to have a positive effect on U.S. public interests. Additionally, the new policy clarifies that such individuals should generally have their D-3 waiver expedited.

Do the policy changes only help persons with DACA?

No. The new policy changes apply to both undocumented persons and DACA beneficiaries who need a D-3 waiver if they otherwise qualify for a temporary work visa.

Does everybody need a D-3 waiver before getting their temporary work visa?

Not everyone needs a D-3 waiver. D-3 waives most immigration violations. One of the most common grounds of inadmissibility for undocumented persons and DACA beneficiaries are the three- and ten-year bars, which can be triggered when a person leaves the United States after accruing more than 180 days of “unlawful presence” in the United States. Persons begin accruing unlawful presence for purposes of the three- and ten-year bars at age 18. Additionally, an individual is not considered to be unlawfully present while they have DACA.

This means that some DACA beneficiaries, such as individuals who obtained their DACA prior to age 18 and a half (about six months) and have maintained continuous DACA status since then, might not have to worry about these bars. These individuals who qualify for a temporary visa can obtain their visa without needing a D-3 waiver.

Can I apply for a D-3 waiver if I am not eligible for an employment-based visa?

No. This waiver is only for individuals who have applied for certain temporary work visas, such as the H-1B, and require a D-3 waiver to re-enter the United States after traveling abroad for their visa interview.

Can I apply for a D-3 waiver from within the United States before traveling to a consulate abroad to get my visa?



No. At the time of this writing, the D-3 waiver can only be requested after attending a visa interview at a consulate abroad. However, the waiver request can be prepared beforehand, so it is ready for submission upon travel abroad.

Which temporary visas will this policy apply to?

The D-3 waiver is generally available to any temporary visa. Some of the most common temporary work visas for DACA beneficiaries and undocumented persons are the H-1B (for persons with at least a bachelor's degree or its equivalent in a specialty occupation), O-1 (persons with extraordinary ability or achievements), and L-1 (managers and executives who work for a foreign affiliate of a U.S. company). Generally, persons would also need to have an employer or agent who is willing to sponsor them to obtain these temporary work visas.

Are there other employment-based options outside of these temporary work visas?

Yes. Some individuals can also qualify for employment-based green cards (lawful permanent residence) now or in the future through separate processes that do not involve the D-3 waiver.

How do I know if I qualify for a temporary or other employment-based visa?

To see if you qualify for an employment-based visa, including temporary work visas and employment-based green cards, consult with an immigration attorney who has experience with business and employment issues.

DACA recipients and employers with a connection to the San Francisco Bay Area or Cornell University can obtain free legal consultations with Path2Papers by clicking [here](#). Experienced immigration attorneys are available to provide free legal consultations to DACA workers and their employers. [Path2Papers](#), a project at Cornell Law School, also connects nonprofits, colleges and universities, and government agencies who sponsor DACA workers with pro bono legal representation.

While we hope to expand our project outside the San Francisco Bay Area in the future, people who are outside our geographic scope can check out our resources to learn more about employment-based options, as well as the [Employment-Based Immigration Pathways resource hub](#) on the Higher Ed Portal. If you need to speak with an attorney near you, visit



<https://www.aialawyer.com/> and filter your search to attorneys who specialize in “Business & Employment.”

Disclaimer: The information provided on this resource is intended for general informational purposes only and should not be construed as legal advice. For advice specific to your situation, we recommend consulting with a qualified immigration attorney. Use of this resource does not create an attorney-client relationship.

